IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEALS NO. 147/2005 & 162/2005

SECOND APPEAL NO.147/2005

Smt. Anandi Bhicaro Veluskar,
residing at H.No.80- A-2,
Ruzarwada, Duler, Mapusa, Goa. ..... Appellant.

V/s.

1. Shri Kustanand Vithu Veluskar,
   major of age, son of Vithu Veluskar,
   and his wife;

2. Smt. Shantu Vithu Veluskar (Madval),
   major of age, Housewife, both residing at
   H.No.64, Santonio Vaddo, Velus,
   Valpoi, Sattari, Goa. ..... Respondents.

Mr. Valmiki Menezes, Advocate for the appellant.

Mr. A. Kansar, Advocate for the respondents.

SECOND APPEAL NO. 162/2005

1. Shri Kustanand Vithu Veluskar,

2. Smt. Shantu Vithu Veluskar (Madval),
   major of age, Housewife, both residing at
   H.No.64, Santonio Vaddo, Velus,
   Valpoi, Sattari, Goa. ..... Appellants.

V/s.

Smt. Anandi Bhicaro Veluskar,
residing at H.No.80- A-2,
Ruzaiwada, Duler, Mapusa, Goa. ..... Respondent.

Mr. A. Kansar, Advocate for the appellants.

Mr. Valmiki Menezes, Advocate for the respondent.

CORAM : A.P. LAVANDE, J.

Date of reserving the Judgment : 7th April, 2006.

Date of pronouncing the Judgment : 13th April, 2006.

J U D G M E N T :

Heard Mr. Menezes, learned Counsel for the appellant and Mr. Kansar, learned Counsel for the respondents in Second Appeal No.147/2005 and Mr. Kansar, learned Counsel for the appellants and Mr. Menezes, learned Counsel for the respondent in Second Appeal No.162/2005. Both these appeals can be disposed of by common judgment since both these appeal are preferred against the Judgment and Decree dated 29th June, 2005 passed by the Ist Ad hoc Additional District Judge, Panaji in Regular Civil Appeal No.140/2004.

2. The appellant in Second Appeal No.147/05 is the defendant in Regular Civil Suit No.41/2001 before the Civil Judge, Jr. Division, Sattari at Valpoi and the respondents are the plaintiffs in the said suit. The plaintiffs filed the said suit for declaration, permanent injunction and for correction of survey records. The plaintiffs claimed

title to the property known as “Santonio Vaddo” situated in the Village of Velus of Sattari Taluka, Goa surveyed under No.85, sub-division 2 of Village Velus. The above suit was contested by the defendant and after appreciating the evidence led by the parties, the trial Court dismissed the suit holding that the plaintiffs had not proved their title or possession in respect of the suit property and, on the contrary, the defendant had proved her possession in respect of the suit property. The appeal preferred against the judgment and order of the trial Court being Regular Civil Appeal No.140/2004 has been partly allowed by the appellate Court and the appellate Court has directed insertion of the names of the plaintiffs in Form I & XIV, in other rights column as occupants of one room of dwelling house situated in the suit property.

3. Having heard the learned Counsel for the parties, I do not find any merit in Second Appeal No. 162/2005 filed by the plaintiffs. However, Second Appeal No.147/2005 filed by the defendant is admitted on the following substantial question of law :

1. After having held that the defendant/appellant is owner in possession of the suit property and the suit house existing therein, whether the appellate Court has exceeded jurisdiction vested in it by ordering that the names of the respondents/ plaintiffs should be inserted in

other rights column in the survey records as occupants ?

3. With the consent of the learned Counsel appearing for the parties, both these appeals are disposed of at the admission stage itself.

4. Mr. Menezes, learned Counsel appearing for the appellant in Second Appeal No.147/05 submitted that the appellate Court having given the finding that the appellant is owner in possession of the suit property, had no jurisdiction to direct that the names of the respondent/ plaintiffs shall be inserted in Form I & XIV in other other rights column, as occupants in respect of one room of the dwelling house situated in the suit property. According to the learned Counsel, the appellate Court ought not to have directed insertion of the names of the respondents/plaintiffs in the survey records and such an exercise is patently illegal. In support of his submission, the learned Counsel relied upon the judgment in the case of **Narayan Mugu Teli (since deceased) vs. Ramchandra Mugu Teli and ors.,** 2004(3) ALL MR 880. The learned Counsel further submitted that the reliefs of declaration and injunction having been refused to the plaintiffs, the appellate Court had no jurisdiction to order insertion of the names of the plaintiffs in survey records and unless a declaration is given by the Court regarding title, the Civil Court has no jurisdiction to direct the Revenue Authorities to insert the name of a person in revenue records.

5. Per contra, Mr. Kansar, learned Counsel appearing for the respondents submitted that both the Courts having found that the plaintiffs were in occupation of one room, the appellate Court was justified in ordering insertion of the names of the plaintiffs in the survey records. He further submitted that both the Courts below have erred in giving findings against the respondents/ plaintiffs in so far as title and possession of the suit property as well as the suit house is concerned. The learned Counsel further submitted that the appellate Court ought to have at least granted injunction against the defendant from disturbing possession of the plaintiffs in respect of the said one room except by following due process of law. In support of his submission, the learned Counsel relied upon the Judgment of this Court in **State of Goa and ors vs. Maruthi Sinai alias Ananda Nilconta Sinai Narcorni Surlekar and others,** 2001(2) Goa L.T. 310.

6. I have considered the submissions made by the learned Counsel for the parties. I have also perused the records. Both the Courts below have rendered concurrent finding that the defendant is owner in possession of the suit property and the suit house existing therein, except one room in the suit house which is in permissive possession of the plaintiffs. This finding recorded is based on proper appreciation of evidence produced by both sides and, therefore, cannot

be said to be perverse. However, I find considerable merit in the submission of Mr. Menezes that the appellate Court exercised the jurisdiction illegally in partly allowing the appeal filed by the plaintiffs by directing insertion of the names of the plaintiffs in Form I & XIV in other rights column as occupants of one room of the dwelling house situated in the suit property. Mr. Menezes is justified in placing reliance on the judgment in the case of **Narayan Mugu Teli (since deceased) vs. Ramchandra Mugu Teli and ors., (supra).** In paragraph 10 of the said judgment, this Court while dealing with the provisions of the Maharashtra Land Revenue Code observed thus :

> "... It is true that the prayer made in plaint is not properly worded. Instead of seeking a declaration of his title, the respondent No.1 has prayed for deletion of the names of the appellant and other respondents from the record of rights in respect of the suit lands and to enter his name therein. It is neither the function nor the jurisdiction of civil court to issue direction for making or deleting entries in the record of rights. That is the function assigned to the revenue authorities under the Maharashtra Land Revenue Code. The proper relief which respondent No.1 could have prayed for was declaration of his title to the suit lands on the basis of the Will executed by deceased Mugu Balu Teli. Once he obtains such a declaration from the court, the revenue authority will have to make or correct the

> entries accordingly in the record of rights in respect of the suit lands. Although, therefore, the appeal is being dismissed, the order and decree passed by the courts below will have to be suitably modified."

In view of the ratio laid down by the learned Single Judge of this Court in **Narayan Mugu Teli's case (supra),** the appellate Court could not have directed insertion of the names of the plaintiffs in the survey records. To that extent, the appellate Court has erred in law. Therefore, the Second Appeal No. 147/2005 filed by the defendant deserves to be allowed. The substantial question of law framed is answered in favour of the appellant.

7. In so far as Second Appeal No.162/2005 preferred by the plaintiffs is concerned, I do not find any illegality in the findings given by both the Courts below. The findings recorded by both the Courts below, in so far as title and possession of the suit property except to the extent of one room in the suit house which is held to be in possession of the plaintiffs are concerned, are borne out from the evidence on record. In so far as the reliance placed by Mr. Kansar upon the judgment of the High Court in the case of **State of Goa and ors vs. Maruthi Sinai alias Ananda Nilconta Sinai Narcorni Surlekar and others (**supra) is concerned, the same does not advance the case of the plaintiffs. A perusal of the plaint discloses that it is not the case of the plaintiffs that

the defendant is out to dispossess the plaintiffs from the suit room and, therefore, it cannot be said that there is any cause of action in favour of the plaintiffs against the defendant to seek relief against dispossession otherwise than in accordance with law. The substantial questions of law formulated by the plaintiffs do not arise for consideration in the present appeal preferred by the plaintiffs.

7. In the result, therefore, Second Appeal No.147/05 preferred by the defendant is allowed. The Decree passed by the lower appellate Court to the extent it directs insertion of the names of the plaintiffs in form I and XIV in other rights column as occupants of one room of dwelling house in the suit property, is quashed and set aside. Second Appeal No.162/2005 preferred by the plaintiffs is dismissed. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

ssm.